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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 KENNETH EDWARD JONES,  
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13 Plaintiff,

14 v.

15 CAROLYN W. COLVIN,  
16 COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,

17 Defendant.

Case No. ED CV 14-0530 JCG

MEMORANDUM OPINION AND  
ORDER

18 Kenneth Edward Jones ("Plaintiff") challenges the Social Security  
19 Commissioner's decision denying his application for disability benefits. Two issues  
20 are presented for decision here:

- 21 1. Whether the Administrative Law Judge ("ALJ") properly determined that  
22 Plaintiff could perform alternative work (*see* Joint Stip. at 5-13); and  
23 2. Whether the ALJ properly rejected Plaintiff's credibility (*see id.* at 5, 13-  
24 23, 26).

25 The Court addresses Plaintiff's contentions below, and finds that reversal is not  
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1 warranted.

2 A. The ALJ Properly Determined that Plaintiff Could Perform Alternative  
3 Work

4 Plaintiff first contends that the ALJ erroneously determined at step five of his  
5 evaluation that, based on a Vocational Expert's ("VE")'s testimony, Plaintiff could  
6 work as an office helper, cashier, and ticket seller. (*See id.* at 5-13.) Specifically,  
7 Plaintiff contends that the ALJ's residual functional capacity ("RFC") finding – that  
8 Plaintiff is limited to standing/walking for four hours – conflicted with the six-hour  
9 standing/walking requirement of the jobs identified by the VE and the ALJ, as those  
10 jobs are described in both the Dictionary of Occupational Titles ("DOT") and the  
11 Commissioner's Social Security Ruling ("SSR") 83-10. (*See id.* at 10-13.)

12 For the reasons outlined below, Plaintiff is mistaken.

13 1. No Conflict Between Plaintiff's RFC and the DOT

14 Preliminarily, there is no conflict between Plaintiff's RFC and the DOT, for two  
15 reasons.

16 First, there is no alleged six-hour limitation in the jobs identified by the VE and  
17 the ALJ. Rather, the DOT code for each job merely states that such job should be  
18 rated as light work if "it requires walking or standing to a significant degree." *See*  
19 DOT Nos. 211.462-010, 1991 WL 671840; 211.467-030, 1991 WL 671853; 239.567-  
20 010, 1991 WL 672232; *see also Devore v. Comm'r of Soc. Sec.*, 2015 WL 3756328, at  
21 \*4 (E.D. Cal. June 16, 2015) (claimant's four-hour standing/walking limitation did not  
22 conflict with cashier and ticket seller job requirements).

23 Second, the ALJ specifically included the four-hour standing/walking limitation  
24 in his hypothetical to the VE. The VE took this limitation into account and testified  
25 that while the limitation reduced the number of the identified DOT code jobs available  
26

1 to Plaintiff, Plaintiff could still perform a significant number of jobs in the economy.  
 2 (AR at 68-70); *see Migliore v. Colvin*, 2013 WL 3935879, at \*2 (C.D. Cal. July 29,  
 3 2013) (“Plaintiff’s inability to stand and walk for more than four hours a day an hour at  
 4 a time limits the number of light jobs he can perform, but it does not categorically  
 5 exclude him from performing all light work”). Such testimony is substantial evidence  
 6 supporting the ALJ’s determination. *See Osenbrock v. Apfel*, 240 F.3d 1157, 1162-63  
 7 (9th Cir. 2001); *Migliore*, 2013 WL 3935879, at \*2.

## 8       2.     No Conflict Between Plaintiff’s RFC and SSR 83-10

9       Additionally, there is no conflict between Plaintiff’s RFC and SSR 83-10, for  
 10 three reasons.

11       First, SSR 83-10’s six-hour standing/walking requirement applies to only a *full*  
 12 range of light work.<sup>1</sup> Here, the ALJ found that Plaintiff had the RFC to perform a  
 13 *limited* range of light work. (AR at 29); *see Jones v. Colvin*, 2014 WL 657914, at \*7  
 14 (C.D. Cal. Feb. 19, 2014) (four-hour standing/walking limitation did not conflict with  
 15 SSR 83-10 because ALJ did not determine that Plaintiff could perform a full range of  
 16 light work, but simply a range of light work).

17       Second, Plaintiff’s four-hour limitation falls within the “frequent” activity range  
 18 described by SSR 83-10.<sup>2</sup> (AR at 29); *see Jones*, 2014 WL 657914, at \*7 (four-hour  
 19 standing/walking limitation did not conflict with SSR 83-10’s “frequent” definition  
 20 because it fell within the “one-third” and “two-thirds” range); *Roybal v. Colvin*, 2013

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 22       <sup>1</sup> SSR 83-10 specifies that light work requires “frequent lifting and carrying of objects weighing up  
 23 to 10 pounds,” and “[s]ince frequent lifting or carrying requires being on one’s feet up to two-thirds  
 24 of a workday, the *full range* of light work requires standing or walking, off and on, for a total of  
 25 approximately 6 hours out of an 8-hour workday.” SSR 83-10 (emphasis added), 1983 WL 31251, at  
 \*5-6; *see also* 20 C.F.R. §§ 404.1567(b), 416.967(b).

26       <sup>2</sup> SSR 83-10 defines “frequent” as “occurring more than one-third to two-thirds of the time.” SSR  
 83-10, 1983 WL 31251, at \*6.

1 WL 4768033, at \*15 (C.D. Cal. Sept. 4, 2013) (“the ALJ’s RFC . . . limitation to 4  
2 hours of standing or walking fits comfortably into the range of frequent activity for  
3 light jobs”).

4 Third, contrary to Plaintiff’s assertion, SSR 83-10 recognizes that not all light  
5 work jobs require standing or walking for six hours.<sup>3</sup> See *Jones*, 2014 WL 657914, at  
6 \*7; *Devore*, 2015 WL 3756328, at \*4.

7 Accordingly, the ALJ Properly determined at step five that Plaintiff could  
8 perform alternative work.

9 B. The ALJ Properly Assessed Plaintiff’s Credibility

10 Plaintiff next contends that the ALJ improperly assessed his credibility. (See  
11 Joint Stip. at 5, 13-23, 26.)

12 As a rule, an ALJ can reject a claimant’s subjective complaints by “expressing  
13 clear and convincing reasons for doing so.” *Benton ex rel. Benton v. Barnhart*, 331  
14 F.3d 1030, 1040 (9th Cir. 2003). “General findings are insufficient; rather, the ALJ  
15 must identify what testimony is not credible and what evidence undermines a  
16 claimant’s complaints.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) (citations  
17 omitted).

18 Here, the ALJ provided at least five valid reasons for rejecting Plaintiff’s  
19 credibility.

20 First, Plaintiff’s daily activities – including being able to eat, dress, and bathe  
21 independently, as well as being able to complete household chores, shop, and cook –  
22 are inconsistent with his allegation of complete disability. (AR at 30, 305); see *Fair v.*  
23 *Bowen*, 885 F.2d 597, 604 (9th Cir. 1989) (in discounting claimant credibility, ALJ  
24 may properly rely on daily activities inconsistent with claim of disabling pain,

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25 <sup>3</sup> “A job is also in [the light work] category when it involves sitting most of the time but with some  
26 pushing and pulling of arm-hand or leg-foot controls . . .” SSR 83-10, 1983 WL 31251, at \*5.

1 including claimant's ability care for personal needs, perform routine household chores,  
2 and shop).

3 Second, Plaintiff's allegations of disabling pain conflicted with observations by  
4 a claims representative – during a lengthy, in-person interview – that Plaintiff had  
5 (1) “normal appearance and behavior” and (2) no physical or mental problems besides  
6 difficulty sitting and standing. (AR at 30, 153); *see Valenzuela v. Astrue*, 2012 WL  
7 5456465, at \*10 (C.D. Cal. Nov. 6, 2012) (ALJ properly relied on claims  
8 representative's observation that claimant's only apparent difficulties seemed to be  
9 standing and walking); SSR 96-7p (“[t]he adjudicator must also consider any  
10 observations about the individual recorded by Social Security Administration  
11 employees during interviews, whether in person or by telephone”).

12 Third, Plaintiff responded favorably to a conservative treatment of physical  
13 therapy, home exercises, and medication. (AR at 31-32, 55-56 (Plaintiff's  
14 administrative hearing testimony that he elected to “stay on [his] medication” rather  
15 than pursue more aggressive forms of treatment, such as surgery), 61, 158, 178, 191,  
16 196-98, 200, 205, 215, 269, 271-72, 290, 322); *see Tommasetti v. Astrue*, 533 F.3d  
17 1035, 1040 (9th Cir. 2008) (ALJ properly rejected claimant's subjective complaints  
18 where medical records showed that she responded favorably to conservative treatment  
19 of physical therapy and medication).

20 Fourth, the ALJ observed that Plaintiff donned a cane at the administrative  
21 hearing, but there was no evidence that Plaintiff had used a cane at his prior  
22 examinations.<sup>4</sup> (See AR at 31, 53-54 (Plaintiff's testimony that he used cane daily for  
23 years even though it was never prescribed by a doctor), 274 (consultative orthopedic  
24 evaluation concluding that Plaintiff “does not require the use of an ambulatory

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26 <sup>4</sup> The ALJ further noted that there was no mention until 2011 – five years into the alleged disability  
27 period – that Plaintiff used *any* assistive device, here a back brace. (AR at 31, 55, 142, 285.)




1 device”), 293 (same), 304); *see also Verduzco v. Apfel*, 188 F.3d 1087, 1090 (9th Cir.  
2 1999) (ALJ properly discredited subjective testimony because claimant “used a cane at  
3 the hearing, although none of his doctors had ever indicated that he used or needed to  
4 use an assistive device in order to walk”); *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
5 2007) (“ALJ’s personal observations may be used . . . in the overall evaluation of the  
6 credibility of [a claimant’s] statements” (internal quotation marks omitted)).

7 Fifth, there are no treatment records showing that Plaintiff had spinal spasms  
8 from 2008 to 2011. (AR at 31, 47, 63, 254, 257, 260, 285, 287, 290, 324, 326-27,  
9 329); *see Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (ALJ properly relied on  
10 three- to four- month treatment gap in partially discrediting claimant’s testimony).

11 Thus, the ALJ properly discounted Plaintiff’s credibility.

12 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered  
13 **AFFIRMING** the decision of the Commissioner denying benefits.

14  
15 DATED: *6-29-2015*

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Hon. Jay C. Gandhi  
United States Magistrate Judge

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20 **This Report and Recommendation is not intended for publication. Nor is it**  
21 **intended to be included or submitted to any online service such as**  
22 **Westlaw or Lexis.**

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